

UNITED STATES OF AMERICA
Before The
OFFICE OF THRIFT SUPERVISION
DEPARTMENT OF THE TREASURY

In the Matter of)

MARK ASPLUND,)

Former Branch Manager of)

DOWNEY SAVINGS AND LOAN)

ASSOCIATION, F.A.,)

Newport Beach, California.)

OTS Order No.: SF-99-006

Date: July 26, 1999

**STIPULATION AND CONSENT TO ISSUANCE OF
ORDER TO CEASE AND DESIST**

WHEREAS, the Office of Thrift Supervision ("OTS"), based upon information derived from the exercise of its regulatory responsibilities, has informed MARK ASPLUND ("ASPLUND"), former employee and Branch Manager of Downey Savings and Loan Association, F.A., Newport Beach, California ("Downey"), that the OTS is of the opinion that grounds exist to initiate administrative proceedings against him for the issuance of administrative order to Cease and Desist, pursuant to 12 U.S.C. § 1818(b);¹ and

WHEREAS, ASPLUND desires to cooperate with the OTS and to avoid the time and expense of such administrative proceedings, and without any adjudication on the merits and solely for the purpose of settling this matter in accordance with Rule 408 of the Federal Rules of Evidence, and without admitting or denying that such grounds exist, or the Findings of Fact or opinions and

¹ All references to the United States Code ("U.S.C.") are as amended, unless otherwise indicated.

conclusions of the OTS, except as to Jurisdiction, (Paragraph 1 (a)-(c), "Jurisdiction" below), which is admitted, hereby stipulates and agrees to the following:

1. Jurisdiction.

a. At all pertinent times, Downey was a "savings association" within the meaning of 12 U.S.C. § 1813(b) and 12 U.S.C. § 1462(4). Accordingly, Downey is an "insured depository institution" as that term is defined in 12 U.S.C. § 1813(c);

b. As an employee of Downey, ASPLUND was an "institution-affiliated party" as that term is defined in 12 U.S.C. § 1813(u), having served in such capacity within six years of the date hereof (see 12 U.S.C. § 1818(i)(3)); and

c. Pursuant to 12 U.S.C. § 1813(q), the Director of the OTS is the "appropriate Federal Banking Agency" to maintain administrative cease and desist proceedings against such a savings association or its institution-affiliated parties. Therefore, ASPLUND is subject to the jurisdiction of the OTS to initiate and maintain a cease and desist proceeding against him pursuant to 12 U.S.C. § 1818(b). The Director of the OTS has delegated to the Regional Director of the West Region of the OTS or his designee ("Regional Director") the authority to the issue order to cease and desist where that individual has consented to the issuance of the order.

2. OTS Findings of Fact. The OTS finds that ASPLUND engaged in multiple conflicts of interests when he: (a) caused an existing customer of Downey, Terry P. Mosher (hereinafter, "Customer") to transfer \$295,000 in deposits from Downey to another bank so that he could benefit himself personally; (b) cosigned on four bank accounts at another bank with an

existing Customer of Downey; and (c) received a truck valued at \$25,200 from an existing Customer of Downey.

3. Consent. ASPLUND consents to the issuance by the OTS of the accompanying Order to Cease and Desist ("Order"). He further agrees to comply with the terms of the Order upon issuance and stipulates that the Order complies with all requirements of law.

4. Finality. The Order is issued under 12 U.S.C. § 1818(b). Upon its issuance by the OTS, it shall be a final order, effective and fully enforceable by the OTS under 12 U.S.C. § 1818(i). The Order constitutes the final disposition of any and all claims and proceedings that the OTS could bring against ASPLUND arising from, or in any manner relating to, any dealings by ASPLUND as former employee and Branch Manager of Downey with Customer, including the matters set forth in paragraph 2 of this Stipulation.

5. Waivers by ASPLUND. ASPLUND waives the following:

a. the right to be formally served with a notice of the OTS's charges against him, as provided by 12 U.S.C. § 1818(b);

b. the right to an administrative hearing of the OTS's charges against him as provided by 12 U.S.C. § 1818(b)(1);

c. the right to seek judicial review of the Order, including without limitation any such right provided by 12 U.S.C. § 1818(h), or otherwise to challenge the validity of the Order;

d. any and all claims against the OTS, including its employees and agents, and any other governmental entity for the award of fees, costs or expenses related to this OTS enforcement matter and/or the Order, whether arising under common law, the Equal Access to Justice Act, 5 U.S.C. § 504, or 28 U.S.C. § 2412;

and

e. the right to assert this proceeding, his consent to the entry of the Order or the issuance of the Order, as the basis for a claim of double jeopardy in any pending or future proceeding brought by the United States Department of Justice or any other governmental entity.

6. Other Governmental Actions Not Affected. ASPLUND acknowledges and agrees that the consent to entry of the Order is for the purpose of resolving this OTS enforcement matter only (arising from the OTS Findings of Fact as set forth in paragraph 2 herein), and does not release, discharge, compromise, settle, dismiss, resolve, preclude, or in any way affect any civil actions, charges against, or liability of ASPLUND:

(a) that arise pursuant to this action or otherwise and that may be brought by any governmental entity other than the OTS; or

(b) that may be brought by the OTS on any other matter not specifically addressed by the OTS in paragraph 4 herein.

7. Agreement for Continuing Cooperation. ASPLUND agrees that, at the OTS's written request, on reasonable notice and without service of a subpoena, he will provide discovery and testify truthfully at any deposition and at any judicial or administrative proceeding related to any investigation, litigation, or other proceeding maintained by the OTS relating to Downey, its subsidiaries, affiliates, holding company, and its institution-affiliated parties.

8. Miscellaneous.

a. The construction and validity of this Stipulation and the Order shall be governed by the laws of the United States of America.

b. All references to the OTS in this Stipulation and the Order shall also mean any of the OTS's predecessors, successors and assigns.


c. The section and paragraph headings in this Stipulation and in the Order are for convenience only, and such headings shall not affect the interpretation of this Stipulation or the Order.

d. This Stipulation and the Order represent the final written agreement of the parties with respect to the subject matter hereof, and constitute the sole agreement of the parties with respect to such subject matters.

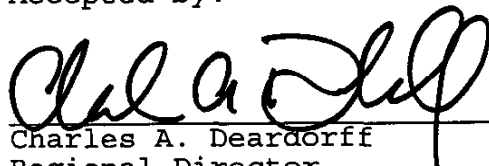
e. This Stipulation and the Order shall remain in effect until terminated, modified, or suspended in writing by the OTS, acting through its Director, Regional Director, or other authorized representative.

WHEREFORE, ASPLUND executes this Stipulation and Consent to the Issuance of an Order to Cease and Desist, intending to be legally bound thereby.

By:


MARK ASPLUND

Accepted by:


Charles A. Deardorff
Regional Director
West Region
Office of Thrift Supervision

7/20/99
Date

7/26/99
Date

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Newport Beach, California.)

OTS Order No.: SF-99-006

Date: July 26, 1999

CONSENT ORDER TO CEASE AND DESIST

WHEREAS, MARK ASPLUND ("ASPLUND"), an Institution-Affiliated Party of Downey Savings and Loan Association, F.A., Newport Beach, California ("Downey"), has executed a Stipulation and Consent to the Issuance of Order to Cease and Desist ("Stipulation"), dated July 20, 1999; and

WHEREAS, ASPLUND, by his execution of the accompanying Stipulation, has consented and agreed to the issuance of this Consent Order to Cease and Desist ("Order"), 12 U.S.C. § 1818(b); and

WHEREAS, the Director of the Office of Thrift Supervision ("OTS") has delegated to the Regional Directors of the OTS the authority to issue an Order to Cease and Desist on behalf of the OTS where respondents have consented to the issuance of the Orders;

MARK ASPLUND
C&D ORDER

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NOW, THEREFORE, IT IS ORDERED that:

1. ASPLUND shall cease and desist from engaging in any conflicts of interest which constitute an unsafe and unsound practice. Further, ASPLUND shall not advance his personal or business interests at the expense of the Banking Institution.

IT IS FURTHER ORDERED that:

2. Disclosure.

Whenever ASPLUND is acting as an Institution-Affiliated Party for a Banking Institution, ASPLUND shall:

(a) Comply with the policies and procedures of the Banking Institution with which he is affiliated; and

(b) Inform his supervisor in writing immediately of any type of personal benefit he or his immediate family stand to receive from an existing customer of the Banking Institution who is not a family member.

3. Notice to Banking Institution.

Prior to accepting any position as an Institution-Affiliated Party, ASPLUND shall provide a copy of this Order to the hiring official at the Banking Institution with which ASPLUND is to be affiliated.

4. Notice to Regulators.

Prior to accepting any position as an Institution-Affiliated Party, ASPLUND shall provide Notice to the OTS and any other Appropriate Federal Banking Agency of his intention to accept a position in a Banking Institution. Such Notice shall include written certification by ASPLUND that he has complied with paragraph 3 of the Order.

5. Responses to Requests.

ASPLUND shall promptly and appropriately respond to any request from the OTS for documents that the OTS reasonably requests to demonstrate compliance with this Order.

6. Definitions. For purposes of this Order and the Stipulation incorporated herein:

- (a) "Affiliate" shall have the meaning set forth at 12 C.F.R. § 574.2(d);
- (b) "Appropriate Federal Banking Agency," shall have the meaning set forth at 12 U.S.C. § 1813(q);
- (c) "Banking Institution" refers to any and all of the following: any "insured depository institution" as that term is defined at 12 U.S.C. § 1813(c) (including but not limited to banks and savings associations); any direct or indirect subsidiary of an insured depository institution, whether wholly or partly owned; any "insured credit union" within the meaning of 12 U.S.C. § 1752(7); any "savings and loan holding company" within the meaning of 12 U.S.C. § 1467a(a)(1); any "bank holding company" within the meaning of 12 U.S.C. § 1841; and any direct or indirect subsidiary of any such holding companies, whether wholly or partly owned;
- (d) "Institution-Affiliated Party," shall have the meaning set forth at 12 U.S.C. § 1813(u);
- (e) Any terms used herein that are defined in other paragraphs of this Order or Stipulation shall have the meanings ascribed to them in such paragraphs; and

(f) Except as otherwise expressly provided in this Order, any terms used herein that are defined in the Home Owners' Loan Act or the Federal Deposit Insurance Act shall have the meanings ascribed to them in said statutes. See, e.g., 12 U.S.C. § 1813.

7. Notice. Any notice to the OTS required under this Order shall be provided to the following address:


Regional Director, West Region
Office of Thrift Supervision
One Montgomery Street, Suite 400
San Francisco, CA 94104
Facsimile No.: (415) 616-1752 or 1753

8. Stipulation. The Stipulation is made a part hereof and is incorporated herein by this reference.

9. Effectiveness of Order. This Order shall become effective on the date it is issued, as shown in the caption hereof. This Order shall remain in effect until it is terminated, modified, or suspended, which may occur only by formal written action of the OTS, acting by and through its Regional Director, or other authorized representative.

OFFICE OF THRIFT SUPERVISION

By:


Charles A. Deardorff
Regional Director
West Region

(asplund cd ord mk/14)

MARK ASPLUND
C&D ORDER